No. 80-830

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

THE ADVERTISER COMPANY,
Petitioner,

v.

DAVID H. FULTON and WILLIAM B. WYATT,
Respondents.

On Petition for a Writ of Certiorari
To The Supreme Court of Alabama

REPLY BRIEF OF PETITIONER

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This reply brief is addressed to the argument in respondents' brief in opposition that as of the date on which the trial court entered summary judgment[1] for petitioner—October 30, 1979—respondents had not had "the benefit of" or "opportunity to pursue" discovery of petitioner.[2]

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[1] Appendix to Petition, A-14-21.

[2] Respondents make this argument in their Questions Presented and at nine additional places in their brief. (pp. 2, 5, 15, 16, and 19).

This argument of respondents is factually incorrect and considerably misleading. Moreover, the issue of the adequacy of discovery prior to summary judgment formed no part or basis of the decision of the Alabama Supreme Court which petitioner seeks to review here. Indeed, that court never mentioned the matter.

The accurate facts are contained in the order of the trial court of December 6, 1979, which denied reconsideration of its summary judgment. That court there specifically addressed the issue of discovery, and noted that during the almost three month period from August 7, 1979 to the date of summary judgment on October 30, 1979, "[Respondents] made no further attempts to depose [Petitioner]".[3]

Accordingly, the issue of the adequacy of discovery prior to summary judgment is a spurious one based upon a factually erroneous premise. For the reasons specified in the petition for Writ of Certiorari, it is respectfully reiterated that this petition should be granted.

Respectfully submitted,

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[3] The entire text of the trial court's order of December 6, 1979, is appended to this reply brief.

APPENDIX

APPENDIX

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

David H. Fulton,

Plaintiff,

vs.

The Advertiser Company,
et al.,

Defendants.

Civil Action No.
CV-79-731-G

William B. Wyatt,

Plaintiff,

vs.

The Advertiser Company,
et al.,

Defendants.

Civil Action No.
CV-79-729-G

Raiford J. Martin,

Plaintiff,

vs.

David G. Bronner,

Defendant.

Civil Action No.
CV-79-786-G

ORDER

This matter came on to be heard on Plaintiffs Fulton, Martin and Wyatt's motions for reconsideration. Counsel for Plaintiffs

Fulton and Wyatt, and counsel for Defendants appeared. Counsel for Plaintiff Martin did not appear.

The Court having read and considered Plaintiffs' motion for reconsideration, the Court finds that the motion is due to be and it is ORDERED that the same is hereby DENIED.[1]

DONE and ORDERED this the 6th day of December, 1979.

/s/ WILLIAM R. GORDON
Circuit Judge

cc: M. R. Nachman, Esq.
Frank M. Wilson, Esq.
Allen Howell, Esq.

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[1] On July 27, 1979, the Defendants filed their motion for protective order and for stay of discovery on behalf of Defendants Bronner and The Advertiser Company alleging that depositions had been set and interrogatories filed, but that discovery should be stayed pending decision by the Court regarding a serious question of jurisdiction of this Court to proceed because of the pendency of certain federal court actions filed by the same Plaintiffs. Although no written order was entered, the Court orally informed Plaintiffs' counsel that the motion was well taken and that discovery should be stayed until the Court determined whether these actions could proceed in Circuit Court. On the 7th day of August, 1979, this Court entered its order which held, *inter alia,* that the motion to dismiss filed by Defendants on the grounds of pendency of similar federal action was due to be and the same was denied. Thereafter the Plaintiffs made no further attempts to depose the defendants.